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**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1953**

**No. 352**

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**JULIA THOMPSON, PETITIONER,**

**vs.**

**RICHARD P. LAWSON, AS DEPUTY COMMISSIONER OF THE UNITED STATES BUREAU OF EMPLOYEES COMPENSATION, ETC., ET AL.**

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**WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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**PETITION FOR HABEAS CORPUS FILED SEPTEMBER 16, 1953**

**HABEAS CORPUS GRANTED**

**SEPTEMBER 16, 1953** *January 4, 1954*

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TRANSCRIPT OF RECORD.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

APPEAL FROM THE UNITED STATES DISTRICT  
COURT IN AND FOR THE SOUTHERN DIS-  
TRICT OF FLORIDA.

PROCEEDINGS in the United States District Court  
in a certain cause therein lately pending wherein  
Julia Thompson is the Plaintiff and Richard P.  
Lawson, as Deputy Commissioner of the United  
States Bureau of Employees' Compensation, Sixth  
Compensation District, Sallie Thompson, Gulf  
Florida Terminal, Inc., a corporation and Ameri-  
can Mutual Liability Insurance Company, are De-  
fendants. Case No. 2195 Civil T.

On June 11th, 1952, The Original Plaintiff filed her  
COMPLAINT in the following words and figures to  
wit:

Southern District of Florida, Civil No. 2195 T.  
Julia Thompson, Plaintiff,

vs.

Richard P. Lawson, as Deputy Commissioner of  
the United States Bureau of Employees' Com-  
pensation, Sixth Compensation District, et al.,  
Defendants.

Bill of Complaint for Mandatory Injunction to set  
Aside Order Rejecting Claim for Death Benefit.

Julia Thompson, the surviving widow of Otis Thomp-  
son, Deceased, by and through her undersigned at-

torneys, brings this, her Bill of Complaint for Mandatory Injunction against Richard P. Lawson, as Deputy Commissioner of the Bureau of Employees' Compensation, Sixth Compensation District, of the United States Department of Labor, he being a resident of the city of Jacksonville, State of Florida; Sallie Thompson, a resident of Newark, New Jersey; Gulf Florida Terminal Company, Inc., a corporation with offices at 13th and York Streets, Tampa, Florida; American Mutual Liability Insurance Company, with offices at 367 North Orange Street, Orlando, Florida, and alleges:

#### I.

That this Bill of Complaint is filed by the Plaintiff for the purpose of reviewing and setting aside an order of the Honorable Richard P. Lawson, as Deputy Commissioner of the Bureau of Employees' Compensation, Sixth Compensation District, of the United States Department of Labor, entered on May 23, 1952, rejecting Plaintiff's claim for the death benefit due for the death of her husband under the Longshoremen's and Harbor Workers' Compensation Act, as enacted by the Congress of the United States on March 4, 1927, being par. 901, et seq., Title 33, of the Code of the Laws of the United States, a copy of said order rejecting claim being attached hereto, made a part hereof and marked Exhibit A.

#### II.

Plaintiff is the surviving wife and widow of Otis Thompson, who was injured on the 7th day of June 1951, while in the employment of Gulf Florida Termi-

nal Company, Inc., while performing service for the employer as a gang header and engaged in loading the SS "Mobilian" which was afloat in Ybor Channel, Tampa, Florida, when, as he was in the lower tween deck and guiding a sling load of dunnage to the tanks, he lost his balance and fell into the tanks, causing injuries which resulted in his death on June 15, 1951.

### III .

Thereafter, the Plaintiff, as the surviving wife and widow of Otis Thompson, filed a claim with the Deputy Commissioner of the Sixth Compensation District, claiming the death benefit under the Longshoremen's and Harbor Workers' Compensation Act for herself; thereafter Sallie Thompson also filed a claim as the surviving wife and widow of Otis Thompson, claiming the death benefit; that the said Deputy Commissioner assumed jurisdiction thereof; that pleadings were filed before him and testimony of certain witnesses were taken before and submitted to him; that thereafter on the 23rd day of May 1952, the said Deputy Commissioner made findings of fact and rejected the claims of Plaintiff and Sallie Thompson; that the rejection of the claim of Sallie Thompson was based upon the fact that she was found not to be the wife of the deceased; that the rejection of the claim of Julia Thompson was based upon the Commissioner's ruling that Julia Thompson was not living with nor dependent for support upon Otis Thompson at the time of his death, as will more fully appear from Exhibit A, attached hereto, reference to which is hereby again made; that the Commissioner's ruling rejecting the claim of Plaintiff was based upon

the following facts: that Plaintiff and deceased were married January 12, 1921, and were never divorced; that Plaintiff and the minor children of the Plaintiff and the deceased were deserted by the deceased at Coleman, Georgia, about the first Monday in November 1925; that deceased went to Tampa, Florida, to live; that deceased married Sallie Williams (Thompson) in Tampa, Florida, on August 17, 1949; that Julia Thompson married Jimmy Lewis Fuller in Miami, Florida, on June 28, 1940, and was divorced by him in Ohio for desertion in 1949; that Julia Thompson has been employed by a bank in St. Petersburg, Florida, since 1943; that in 1949 Sallie Thompson went from Tampa to Newark, New Jersey, to visit a relative and secured a job; that since that time Sallie Thompson has continued to work and reside in Newark although she returned to Tampa on two or three occasions; that about three weeks before his death, the deceased called upon Plaintiff at their daughter's home and asked her if she would "take him back," which she refused to do.

#### IV.

The rejection of the claim of the Plaintiff by the Deputy Commissioner is not in accordance with law and is erroneous for the reason that the wrong-doing of the Plaintiff after she commenced to live apart from the deceased for justifiable cause did not deprive her of the right to the death benefit as his surviving wife and widow under the statute here in question.

Wherefore, Plaintiff prays:

a. That this Court take jurisdiction of this suit.

b. That upon final hearing herein, it be decreed by this Court that the said order by the Deputy Commissioner rejecting Plaintiff's claim to the death benefit was not in accordance with law, and that the same be vacated, set aside and held to be of no force, virtue or effect.

c. That a mandatory injunction be issued by this Court to the Deputy Commissioner directing him to set aside said order rejecting Plaintiff's claim, and to enter a new order in accordance with the law, as applied to the facts in this case.

d. That the Plaintiff herein may have such other and further relief that she may be entitled to in equity and good conscience.

This 6th day of June 1952.

(S.) JULIA THOMPSON,  
Plaintiff.

McCLURE & TURVILLE,  
By (S.) J. A. McCLURE, JR.,  
Attorneys for Plaintiff,  
821 Florida National Bank Bldg.,  
St. Petersburg, Florida.

State of Florida,  
County of Pinellas.

Before me, the undersigned authority, this day personally appeared Julia Thompson, who, after being duly sworn according to law, says that the matters and things set forth in the foregoing Complaint are true.

(S.) JULIA THOMPSON.

Sworn to and subscribed before me this 6th day of June 1952.

(S.) OLGA S. GAZDIK,  
Notary Public State of Florida  
at large.

(Notarial Seal.)

My commission expires August 23, 1955. Bonded  
by Mass. Bonding & Insurance Co.

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EXHIBIT A.

(Copy.)

U. S. Department of Labor  
Bureau of Employees' Compensation  
Sixth Compensation District

In the matter of the claims for compensation under  
the Longshoremen's and Harbor Workers' Com-  
pensation Act.

Julia Thompson and Sallie Thompson claiming, re-  
spectively, as widow of deceased employee, Otis  
Thompson, Claimants,

vs.

Gulf Florida Terminal Company Incorporated Em-  
ployer.

American Mutual Liability Insurance Company, In-  
surance Carrier.

Compensation Order Rejection of Claims Case No.  
399-260-F.

Such investigations in respect to the above entitled  
claims having been made as is considered necessary  
and hearings having been duly held in conformity



with law, the Deputy Commissioner makes the following

### Findings of Fact.

That on the 7th day of June 1951, the deceased herein, Otis Thompson, was in the employ of the employer herein, Gulf Florida Terminal Company Incorporated of 13th and York Streets, Tampa, Florida at Tampa in the State of Florida in the Sixth Compensation District established under the provisions of the Longshoremen's and Harbor Workers' Compensation Act and that the liability of the employer for the payment of compensation under said Act was insured by American Mutual Liability Insurance Company; that on said day, the deceased herein, while performing service for the employer as gang header and engaged in loading the S/S Mobilian which was afloat in Ybor Channel, sustained personal injury when, as he was in lower tween deck and guiding a sling load of dunnage into the tanks, he lost his balance and fell into the tanks causing injuries to his head with severe cerebral concussion, fracture of the sixth cervical vertebra and transection of the spinal cord which resulted in his death on June 15th, 1951; that the employer furnished the deceased with medical treatment, etc., in accordance with Section 7(a) of the said Act; that the average annual earnings of the deceased herein at the time of his injury amounted to the sum of \$2,687.96; that the funeral expenses were \$603.25 and were paid by Lucille Thompson; that the insurance carrier has reimbursed Lucille Thompson in the sum of \$400.00 for such expenses; that the claimant Julia Thompson and the deceased herein Otis Thompson were married on

January 15th, 1921; that Julia Thompson and Otis Thompson thereafter had two children, William Gordon Thompson and Lucille Thompson, and lived together as man and wife in the Beauchamp-Hammack Community near Coleman, Randolph County, Georgia until approximately the first Monday in November 1925 when Otis Thompson deserted Julia Thompson; that Otis Thompson and Julia Thompson never lived together as man and wife thereafter; that Otis Thompson never contributed to the support of Julia Thompson or their children after that day; that Julia Thompson never applied to any Court for relief or support for herself and her children nor attempted in any way to compel Otis Thompson to support her or their children; that when Otis Thompson deserted Julia Thompson he moved to Tampa, Florida, where he made his home and he remained a resident of Tampa until his death on June 15th, 1951; that Julia Thompson continued to live at or near Coleman, Georgia until about 1936; that about 1936 Julia Thompson and Alice Thompson, mother of Otis, went by automobile from Coleman to Tampa where Alice Thompson remained to visit with her son Otis Thompson; that Otis Thompson, at the time his mother arrived at Tampa, went to the automobile and gave directions to Julia Thompson regarding the route from Tampa to Homestead, Florida, where Julia Thompson and the children were going to visit her mother; that Julia Thompson did not thereafter return to Coleman; that Otis Thompson and Julia Thompson were never divorced; that on June 28th, 1940 Julia Thompson was married to Jimmy Lewis Fuller at Miami, Florida, and ever since then she has been known as Julia Fuller; that Jimmy Lewis Fuller divorced Julia Fuller (Thompson) in August, 1949 in Ohio, charging

desertion; that Julia Thompson moved to St. Petersburg, Florida in 1941 and has lived there ever since under the name of Julia Fuller; that Julia Fuller (Thompson) started to work for a bank in St. Petersburg in 1943 and is still working for the same employer; that Otis Thompson knew that Julia Thompson had been married and went by the name of Fuller; that the claimant, Julia Thompson, was born March 18, 1908; that prior to his desertion of Julia Thompson, Otis Thompson had been unfaithful to Julia Thompson and had been "running around" with, and had been intimate with a neighbor named Sallie Williams; that it was a matter of common knowledge in the community that Otis Thompson and Julia Thompson were man and wife; that Sallie Williams, while she was living near Coleman, knew that Otis Thompson and Julia Thompson were reputed to be man and wife; that about August, 1926, Otis Thompson went to Coleman from Tampa, but did not visit Julia Thompson, and left again in a day or two, returning to Tampa and taking Sallie Williams with him; that Otis Thompson and Sallie Williams then began living together and on August 17th, 1929 they were married at Tampa; that at the time of making application for the license for this marriage, Otis Thompson stated that he had been divorced; that this was a false statement in that Otis Thompson and Julia Thompson had never been divorced; that Sallie Williams knew that Otis Thompson and Julia Thompson had not been divorced; that in 1949 Sallie Thompson went to Newark, New Jersey to visit a relative and while there secured a job; that since that time she has continued to work and to reside in Newark, New Jersey and was residing there at the time of Otis Thompson's injury and death; that during the

period from 1949 until the death of Otis Thompson on June 15th, 1951, Sallie Thompson returned to Tampa on two or three occasions, stayed at Tampa approximately one month and returned to Newark; that the claimant, Sallie Thompson, was born April 25th, 1905; that during Sallie Thompson's absence from Tampa, and at a time approximately three weeks before his injury on June 7th, 1951, Otis Thompson called upon Julia Thompson at the home of their daughter Lucille; that during the time of that visit Otis Thompson asked Julia Thompson if she would "take him back" and Julia Thompson refused; that Julia Thompson did not have any intentions of ever again living with Otis Thompson and resuming the relationship of husband and wife; that at the time of his injury and death the claimant, Julia Thompson, was the lawful wife of Otis Thompson; that from November 1925 until June 1940 the claimant, Julia Thompson, was living apart from Otis Thompson by reason of his desertion; that Julia Thompson was not living apart from Otis Thompson at the time of his death for justifiable cause or by reason of his desertion; that at the time of his injury or death Julia Thompson was not dependent for support upon Otis Thompson; that the claimant, Julia Thompson, is not entitled to receive compensation for the death of Otis Thompson; that the marriage of Otis Thompson and Sallie Williams on August 17th, 1929 was illegal and void ab initio; that the claimant, Sallie Thompson, was not the lawful wife of the deceased herein, Otis Thompson; that the claimant, Sallie Thompson, is not entitled to receive compensation for the death of Otis Thompson; that the fee of McClure & Turville, attorneys for Julia Thompson for services rendered in this case is approved in the sum of \$400.00; that the

fee of Paul Lake, attorney for Sallie Thompson for services rendered in this case is approved in the sum of \$300.00.

Upon the foregoing facts it is ordered by the Deputy Commissioner that the claim for compensation filed by Julia Thompson be and it is hereby rejected for the following reasons:

1. That she was not living with or dependent for support upon Otis Thompson at the time of his death.
2. That she was not living apart from Otis Thompson for justifiable cause or by reason of his desertion at the time of his death.

Upon the foregoing facts it is ordered by the Deputy Commissioner that the claim for compensation filed by Sallie Thompson be and it is hereby rejected for the following reason:

1. That she is not the surviving wife of the deceased, Otis Thompson.

Given under my hand at Jacksonville, Florida, this 23rd day of May 1952.

(S.) RICHARD P. LAWSON,  
Deputy Commissioner.

Proof of Service.

I hereby certify that a copy of the foregoing Compensation Order was sent by registered mail to the

claimants, employer and the insurance carrier at the last known address of each as follows:

Name—Address

Julia Thompson, 1423—3rd Avenue, South St. Petersburg, Florida.

Sally Thompson, 75 South Orange Avenue, Newark, New Jersey.

Gulf Florida Terminal Co., Inc., 13th & York Streets Tampa, Florida.

American Mutual Liability Insurance Co., 367 North Orange Avenue, Orlando, Florida.

(S.) RICHARD P. LAWSON,  
Deputy Commissioner.

Mailed: May 23rd, 1952.

CC:

U. S. Department of Labor

Bureau of Employees' Compensation

4th Street & Independence Avenue, S.W.

Washington 25, D. C.

Mr. J. Herndon Hansbrough, Attorney

C/O MacFarlane, Ferguson Allison & Kelly

1st National Bank Bldg.,

Tampa, Florida

McClure & Turville, Attorneys

817 Florida Nat'l Bank Bldg.,

St. Petersburg, Florida

Paul Lake, Attorney

Stovall Professional Building

Tampa, Florida

On July 10th, 1952 the Defendant, Gulf Florida Terminal Company, Incorporated, filed its MOTION TO DISMISS in the following words and figures to wit:

(Title Omitted.)

Certificate of Service.

I do hereby certify that copy hereof has been furnished to McClure and Turville, attorneys for Plaintiff, 821 Florida National Bank Building, St. Petersburg, Florida, by mail this 9th day of July, 1952.

(S.) ARTHUR A. SIMPSON,  
 (Arthur A. Simpson),  
 Of MacFarlane, Ferguson,  
 Allison & Kelly, P. O. Box  
 1531, Tampa, Florida,  
 Attorneys for Defendant.

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Motion to Dismiss.

Comes now the Defendant, Gulf Florida Terminal Company, Incorporated, by its undersigned attorneys, and moves the Court to dismiss the Complaint filed herein for that:

1. Complaint fails to state a claim upon which relief can be granted.
2. It affirmatively appears from the findings of fact shown in the Compensation Order attached as

"Exhibit A" to the Complaint that the order rejecting the claim of Julia Thompson for compensation was correct as a matter of law.

(S.) ARTHUR A. SIMPSON,  
(Arthur A. Simpson),  
Of Macfarlane, Ferguson,  
Allison & Kelly, P. O. Box  
1531, Tampa, Florida,  
Attorneys for Defendant.

---

On August 20th, 1952 the Defendant, Richard P. Lawson, filed his MOTION TO DISMISS in the following words and figures to wit:

(Title Omitted.)

#### Motion to Dismiss Bill of Complaint.

Comes now the defendant, Richard P. Lawson, as Deputy Commissioner of the United States Bureau of Employees' Compensation, Sixth Compensation District, by the undersigned Assistant United States Attorney, and moves this Honorable Court to dismiss the plaintiff's bill of complaint filed herein, upon the following grounds:

1. Plaintiff has failed to provide sufficient record for review by this Court.
2. Plaintiff's bill of complaint fails to state a cause of action.



3. Plaintiff seeks a trial de novo before this Court contrary to statutes and regulations permitting review of defendant's orders.

(S.) J. HARDIN PETERSON, JR.,  
(J. Hardin Peterson, Jr.),  
Assistant United States At-  
torney.

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On December 31st, 1952 the Court filed its ORDER in the following words and figures to wit:

(Title Omitted.)

Order Dismissing Bill of Complaint.

This cause coming on to be heard December 23, 1952, upon Plaintiff's Bill of Complaint for Mandatory Injunction to set aside the order rejecting claim for death benefit, Motions to Dismiss the same filed herein by Sallie Thompson, Gulf Florida Terminal Company, Incorporated, and American Mutual Liability Insurance Company upon the grounds that Complainant fails to state a claim upon which relief can be granted and it affirmatively appears from the findings of fact shown in the compensation order attached as Exhibit A to the Complaint that the order rejecting the claim of Julia Thompson for compensation was correct as a matter of law, and the Motion to Dismiss filed herein by Richard P. Lawson, as Deputy Commissioner of the United States Bureau of Employees Compensation, upon the grounds that Plaintiff's Bill of Complaint fails to state a cause of action, seeks a

trial de novo and fails to provide sufficient record for review by this Court, and all parties defendant being represented by counsel and before the Court and after argument before the Court,

It Is Thereupon Ordered, Adjudged and Decreed that the Motion to Dismiss filed herein by the Defendant, Richard P. Lawson upon the grounds that Plaintiff has failed to provide sufficient record for review by this Court and seeks a trial de novo be, and the same is hereby, denied.

It Is Further Ordered, Adjudged and Decreed that the Motions to Dismiss filed herein by each of the Defendants upon the grounds that the complainant fails to state a claim upon which relief can be granted and it affirmatively appears from the findings of fact shown in the compensation order attached as Exhibit A to the Complaint that the order rejecting the claim of Julia Thompson for compensation was correct as a matter of law be, and the same are hereby, granted under authority of Ryan Stevedoring Co., Inc., et al., vs. Henderson, et al., 138 Fed. 2d. 348, and American Mutual Liability Insurance Company, et al., vs. Henderson, et al. 141 Fed. 2d. 813.

This 31 day of December 1952.

(S.) GEORGE W. WHITEHURST.

On January 27, 1953 Plaintiff filed her NOTICE OF APPEAL in the following words and figures to wit:

(Title Omitted.)

Notice of Appeal.

Notice is hereby given that Julia Thompson, Plaintiff in the above-entitled cause, appeals to the United States Court of Appeals for the Fifth Circuit from the Order Dismissing Bill of Complaint entered herein on the 31st day of December 1952, in favor of the Defendants, and against the Plaintiff.

This 26th day of January 1953.

McCLURE & TURVILLE,  
By (S.) J. A. McCLURE, JR.,  
Attorneys for Appellant.

821 Florida National Bank Building,  
St. Petersburg, Florida.

I do hereby certify that copies hereof have been furnished by mail this 26th day of January 1953 to Macfarlane, Ferguson, Allison & Kelly, attorneys for Gulf Florida Terminal Co., Inc., and American Mutual Liability Insurance Company, P. O. Box 1531, Tampa, Florida; Paul Lake, attorney for Sallie Thompson, Stovall Professional Building, Tampa, Florida, and United States Attorney, Post Office Box 2344, Tampa 1, Florida, attorney for Richard P. Lawson, Deputy Commissioner.

(S.) J. A. McCLURE, JR.,

On January 27th, 1953 Plaintiff filed her STATEMENT OF POINTS in the following words and figures to wit:

(Title Omitted.)

Statement of Points.

The statement of points to be relied upon by appellant, plaintiff below, is as follows:

1. The Court erred in granting Motions to Dismiss by entering Order Dismissing Bill of Complaint.

McCLURE & TURVILLE,  
By (S.) J. A. McCLURE, JR.,  
Attorneys for Appellant.

821 Florida National Bank Building,  
St. Petersburg, Florida.

I do hereby certify that copies hereof have been furnished by mail this 26th day of January 1953 to Macfarlane, Ferguson, Allison & Kelly, attorneys for Gulf Florida Terminal Co., Inc., Mutual Liability Insurance Company, P. O. Box 1531, Tampa, Florida; Paul Lake, attorney for Sallie Thompson, Stoval Professional Building, Tampa, Florida, and United States Attorney, attorney for Richard P. Lawson, as Deputy Commissioner of the United States Bureau of Employees' Compensation, Sixth Compensation District, Post Office Box 2344, Tampa 1, Florida.

(S.) J. A. McCLURE, JR.,  
Of Counsel.

On January 27th, 1953 Plaintiff filed her DESIGNATION OF CONTENTS OF RECORD in the following words and figures to wit:

(Title Omitted.)

Designation of Contents of Record.

Pursuant to Rule 75 (a) of the Federal Rule of Civil Procedure, Plaintiff-Appellant herewith designates for inclusion in the record on appeal to the United States Court of Appeals for the Fifth Circuit the following portions of the record and proceedings in this action:

1. The Complaint, together with Exhibit A attached thereto.
2. Motions to Dismiss filed by the Defendant, Gulf Florida Terminal Company, Incorporated, and Defendant, Richard P. Lawson.
3. Order Dismissing Bill of Complaint.
4. Notice of Appeal.
5. Statement of Points.
6. This Designation.

McCLURE & TURVILLE,

By (S.) J. A. McCLURE, JR.,

Attorneys for Plaintiff-Appellant.

821 Florida National Bank Bldg.,  
St. Petersburg, Florida.

I do hereby certify that copies hereof have been furnished by mail this 26th day of January 1953 to Macfarlane, Ferguson, Allison & Kelly, attorneys for Gulf Florida Terminal Co., Inc., and American Mutual Liability Insurance Company, P. O. Box 1531, Tampa, Florida; Paul Lake, attorney for Sallie Thomspson, Stovall Professional Building, Tampa, Florida, and United States Attorney, attorney for Richard P. Lawson, as Deputy Commissioner, Post Office Box 2344, Tampa 1, Florida.

(S.) J. A. McCLURE, JR.,  
Of Counsel.

## CLERK'S CERTIFICATE.

United States of America,  
Southern District of Florida.

I, JULIAN A. BLAKE, Clerk of the United States District Court for the Southern District of Florida, and as such the legal custodian of the records and files of said Court, do hereby certify that the foregoing typewritten pages, numbered from 1 to 16, inclusive, contain a full, true and correct copy of Transcript of Record in a certain cause lately pending in said Court in the matter of Julia Thompson as the Plaintiff, and Richard P. Lawson, as Deputy Commissioner of the United States Bureau of Employees' Compensation, Sixth Compensation District, et al., are Defendants, prepared in accordance with and requested by directions to the Clerk, as same appears among the files and records of this Court.

In Witness Whereof, I hereunto set my hand and affix the official seal of this Court, this the 23rd day of February, A. D. 1953.

JULIAN A. BLAKE,  
Clerk, United States District  
Court, Southern District of  
Florida,

By LEONA JONAS,  
Deputy Clerk.

(Seal)

[fol. 22] IN THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 14,484

JULIA THOMPSON

versus

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER OF THE UNITED  
States Bureau of Employees' Compensation, Sixth Com-  
pensation District, Et Al.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION, dated June  
3rd, 1953; omitted in printing



IN THE  
United States Court of Appeals  
FOR THE FIFTH CIRCUIT

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No. 14484

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JULIA THOMPSON,

Appellant,

versus

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER  
OF THE UNITED STATES BUREAU OF EM-  
PLOYEES' COMPENSATION, SIXTH COMPENSA-  
TION DISTRICT, ET AL.,

Appellees.

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*Appeal from the United States District Court for the  
Southern District of Florida.*

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(June 30, 1953.)

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Before HUTCHESON, Chief Judge, and RUSSELL and  
STRUM, Circuit Judges.

HUTCHESON, Chief Judge: This appeal presents  
the single question whether, on the facts<sup>1</sup> found by the

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<sup>1</sup> These as material here are: that the claimant Julia Thompson and the deceased were married on Jan. 15, 1921; that Julia Thompson and Otis Thompson thereafter had two children, William Gordon Thompson and Lucille Thompson, and lived together as man and wife until approximately the first Monday in November, 1925, when Otis Thompson deserted Julia Thompson; that Otis Thompson and Julia Thompson never lived together as man and wife thereafter; that Otis Thompson never contributed to the support of Julia Thompson or their children after that date; that Otis Thompson and Julia Thompson were never divorced; that on June 28, 1940, Julia Thompson was

Deputy Commissioner, Commissioner and Judge were right in rejecting plaintiff's claim that, within the meaning of Section 902(16),<sup>2</sup> Title 33 U.S.C., she was the "widow" of Otis Thompson, deceased, and entitled to recover compensation as such.

Here, appealing from the judgment approving the finding of the commissioner and dismissing her claim, plaintiff, admitting that the cases<sup>3</sup> in this court, cited by the district judge in support of his judgment, do support it, assails those cases as wrongly decided.

married to Jimmy Lewis Fuller at Miami, Florida; and ever since then she has been known as Julia Fuller; that Jimmy Lewis Fuller divorced Julia Fuller (Thompson) in August, 1949, in Ohio, charging desertion; that Julia Thompson moved to St. Petersburg, Florida in 1941 and has lived there ever since under the name of Julia Fuller; that about Aug., 1926, Otis Thompson and Sallie Williams began living together and on Aug. 17, 1929, they were married at Tampa; that at the time of making application for the license for this marriage, Otis Thompson stated that he had been divorced; that this was a false statement in that Otis Thompson and Julia Thompson had never been divorced; and that Sallie Williams knew that they had not, and the purported marriage was illegal and void; that in 1949 Sallie Thompson went to Newark, New Jersey to visit a relative and while there secured a job; that since that time she has continued to work and to reside in Newark, New Jersey and was residing there at the time of Otis Thompson's injury and death; that during the period from 1949 until the death of Otis Thompson on June 15, 1951, Sallie Thompson returned to Tampa on two or three occasions, stayed at Tampa approximately one month and returned to Newark; that during Sallie Thompson's absence from Tampa, and at a time approximately three weeks before his injury on June 7, 1951, Otis Thompson called upon Julia Thompson at the home of their daughter Lucille; that during the time of that visit Otis Thompson asked Julia Thompson if she would "take him back" and Julia Thompson refused; that Julia Thompson did not have any intentions of ever again living with Otis Thompson and resuming the relationship of husband and wife; on the basis of these facts the commissioner found: (1) that at the time of his injury and death the claimant, Julia Thompson was the lawful wife of Otis Thompson; (2) that from Nov., 1925, until June, 1940, she was living apart from him by reason of his desertion; (3) that she was not living apart from him at the time of his death for justifiable cause or by reason of his desertion; (4) that at the time of his death she was not dependent for support upon him; and (5) that she was not entitled to receive compensation for his death.

<sup>2</sup> "The term 'widow' includes only the decedent's wife living with or dependent for support upon him at the time of his death; or living apart for justifiable cause or by reason of his desertion at such time."

<sup>3</sup> *Ryan v. Henderson*, 138 F(2) 348; *American v. Henderson*, 141 F(2) 813.

Citing as in conflict therewith two earlier decided cases, one from the Third<sup>4</sup> and the other from the Second Circuit,<sup>5</sup> and a later one from the Ninth Circuit,<sup>6</sup> she insists that we should re-examine our decisions and, on the authority of the cited cases, disapprove and overrule them.

We cannot agree. We find nothing in the reasoning of the cited cases to recommend them to our approval. On the contrary, we think they proceed upon a completely false premise. This is that the rejection of the wife's claim is based upon the view that, at the time of the death of the husband, the wife was living an immoral life and must be punished therefor. While this fact points up the anomaly of her claim in instances where the new relation is knowingly meretricious, this is not at all the basic reason for its rejection. The reason is to be found in the precise terms of the statute which requires for recovery that "at the time of his death", the woman claiming as "widow" must either be *living with* or dependent for support upon her husband, or, *if she is living apart from him* that she is doing so for *justifiable cause or by reason of his desertion at that time*.

Our decisions therefore proceed upon the conclusion that living in the relation of wife to another man and having and raising children by and for him at the time of her husband's death cannot be said to be justifiable cause for the wife's not living with him. Neither, if causation is to mean anything, can it be said that a woman is, at the time of her husband's death, living

<sup>4</sup> Travelers Ins. Co. v. Norton, 34 Fed. Supp. 740.

<sup>5</sup> Associated Operating Co. v. Lowe, 52 Fed. Supp. 550; Affirmed Per Curiam, 138 F(2) 916.

<sup>6</sup> Moore Dry Dock Co. v. Pittsbury, 169 F(2) 988.

apart from him because of his desertion, when though originally deserted by her husband without fault on her part, she has made a new life for herself by living with another man as his wife.

The fact made so much of in the *Moore Dry Dock* case, *supra*, that the deserted wife, in the good faith belief that her first marriage had ended in divorce, had entered into a new ceremonial marriage, while relevant on the question of her moral blameworthiness, would not show or tend to show that she was the statutory widow of the deceased. On the contrary, by showing that she had set up a new marital establishment on a permanent basis which the death of her first husband had legalized, it would show even more clearly than a meretricious relation would that she was not the widow of the deceased but another man's wife.

We are in no doubt that our cases were correctly decided and should not be departed from. But if we are incorrect in the view that they were well decided on their facts, the judgment should still be affirmed, since it is undisputed and found that three weeks before his death the deceased had endeavored to have the plaintiff return to him and she had refused to do so.

The judgment was right. It is AFFIRMED.

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A True copy:

Teste:

.....  
Clerk of the United States Court of  
Appeals for the Fifth Circuit.

[fol. 27] IN THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 14,484

JULIA THOMPSON

versus

RICHARD P. LAWSON, AS DEPUTY COMMISSIONER OF THE UNITED  
State Bureau of Employees' Compensation, Sixth Com-  
pensation District, Et Al.

JUDGMENT—June 30th, 1953

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was taken under submission by the Court upon the record and briefs on file;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Julia Thompson, be condemned, to pay the cost of this cause in this Court, for which execution may be issued out of the said District Court.

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[fol. 28] IN THE UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT

No. 14,484

[Title omitted]

DESIGNATION OF RECORD—Filed September 10th, 1953

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the

United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix.
2. Opinion of the Court of Appeals.
3. Judgment of the Court of Appeals.
4. Designation of record.
5. Clerk's certificate.

(S). J. A. McClure, Jr., McClure and Turville,  
Counsel for Petitioner.

[fol. 29] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 30] SUPREME COURT OF THE UNITED STATES, OCTOBER  
TERM, 1953

No. 352

JULIA THOMPSON, Petitioner,

vs.

RICHARD P. LAWSON, as Deputy Commissioner of the United  
States Bureau of Employees Compensation, etc., et al.

ORDER ALLOWING CERTIORARI—Filed *January 4, 1954*  
~~November 16, 1953~~

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.